



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 537

IN THE MATTER OF MASSACHUSETTS MEDICAL SOCIETY

DISPOSITION AGREEMENT

This Disposition Agreement ("Agreement") is entered into between the State Ethics Commission ("Commission") and the Massachusetts Medical Society ("Mass. Medical") pursuant to §5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented to final Commission order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On July 12, 1994, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into allegations that Mass. Medical had violated the conflict of interest law, G.L. c. 268A. The Commission has concluded the inquiry and, on September 27, 1994, voted to find reasonable cause to believe that Mass. Medical violated G.L. c. 268A, §3.

The Commission and Mass. Medical now agree to the following findings of fact and conclusions of law:

1. Mass. Medical is the oldest continuously operating medical society in the country, having been incorporated by the Massachusetts Legislature in 1781. The purpose of the Society is to advance medical knowledge, to support professional and ethical medical standards and to promote the health and well being of the citizens of the Commonwealth.
2. Mass. Medical is a non-profit corporation whose membership is made up of physicians, residents and medical students who primarily reside or have professional activity in Massachusetts. Mass. Medical is governed by a 524 member House of Delegates and a 32 member Board of Trustees. Mass. Medical has an elected president who serves a one-year term. Mass. Medical currently has 15,251 members, most of whom pay annual dues.
3. The medical profession in Massachusetts is subject to many state laws. Numerous bills are filed in the Massachusetts Legislature each year potentially affecting the medical profession and the public health.^{1/} Mass. Medical monitors proposed laws potentially affecting the medical profession and the public health, and frequently seeks to promote, oppose or otherwise influence such legislation.
4. Mass. Medical has many committees and departments through which it advances the practice of medicine. During the period here relevant, Mass. Medical had a Government Relations Department which was responsible for monitoring Massachusetts legislation of interest to Mass. Medical's members and presenting Mass. Medical's position on such proposed laws to members of the Legislature.
5. Mass. Medical employed lobbyists, including Andrew Hunt ("Hunt"), who was, at all times here relevant, a Massachusetts registered legislative agent for Mass. Medical. He was assigned to the Government Relations Department and functioned as a full-time lobbyist for Mass. Medical in dealing with the Massachusetts Legislature. In this role, he tracked health care legislation of interest to Mass. Medical, coordinated testimony and presentations to legislative committees, and met with various legislators and their staff.
6. In order to effectively present Mass. Medical's position on legislation to state legislators, Hunt developed

and maintained personal relationships with legislators and their staff people. These personal relationships ensured that Hunt would have access to these government officials so that Mass. Medical's position on proposed laws could be presented.

7. During the period here relevant, one way in which Hunt created strong, personal relationships with Massachusetts legislators was by providing them with free meals and drinks, golf, and other gratuities. These gratuities created and/or fostered goodwill and personal relationships between the public officials and Hunt which, in turn, enhanced Hunt's access to the public officials.

8. During the period here relevant, Hunt submitted a monthly expense report to Mass. Medical listing each of his expenses by amount, date and by reference to a general description of the nature of the expense, such as "medical malpractice" or "medicare." The reports, however, failed to identify who was entertained. In any event, Mass. Medical paid for all of these expenses.

9. Hunt has refused to now identify who was entertained.

10. Between July 1989 and April 1993, Hunt provided individual Massachusetts legislators with meals, golf and other entertainment worth \$50 or more on numerous occasions. The value of this entertainment was approximately \$15,000.^{2/} Examples of such entertainment are as follows.

a. From December 8 to December 14, 1992, Hunt was in Puerto Rico. There was a Council of State Governments ("CSG") conference being held in San Juan at the time. Hunt stayed at the Las Palmas del Mar Resort on the southern coast of Puerto Rico with several legislators and a number of Massachusetts lobbyists. On December 13, 1992, Hunt and another Massachusetts lobbyist went on a fishing excursion with two representatives and their spouses. For that purpose, Hunt and the other lobbyist chartered a 40- foot fishing vessel with a captain and one-member crew. The boat trip lasted several hours and included deep sea fishing, a stop for snorkeling, and a box lunch. The cost of chartering the boat was \$766, split equally between Hunt and the other lobbyist. Thus, Hunt provided each legislator and his spouse with entertainment at a cost to him of \$128 per couple.

b. Between March 10 and March 15, 1993, Hunt stayed at the Plantation Resort at Amelia Island, Florida, where an educational conference sponsored by the Conference of Insurance Legislators ("COIL") ran from March 11th to March 14th. Hunt stayed at the Plantation Resort with a number of Massachusetts legislators and lobbyists. During his stay, Hunt paid a total of \$240 in greens fees for three Massachusetts legislators. (The cost of each greens fee was approximately \$80.)

11. Section 3(a) of G.L. c. 268A prohibits anyone from, directly or indirectly, giving a state employee anything of substantial value for or because of any official act performed or to be performed by the state employee.

12. Massachusetts legislators and their staff are state employees.

13. Anything with a value of \$50 or more is of substantial value for §3 purposes.^{3/}

14. By giving individual Massachusetts legislators or their staff gratuities worth \$50 or more while each such legislator or staff member was, recently had been, or soon would be in a position to take official action concerning proposed legislative matters which could affect the financial or other interests of Mass. Medical's members, Mass. Medical's legislative agent gave those legislators and their staff members gifts of substantial value for or because of acts within their official responsibility performed or to be performed by them. As a corporation, Mass. Medical acts through and is responsible for the conduct of its employees. Because it is responsible for the conduct of its legislative agent, Mass. Medical violated G.L. c. 268A, §3(a).^{4/}

15. The Commission is not aware of any evidence that (a) Mass. Medical gave any of the foregoing gratuities to legislators with the intent to influence any specific official act by them as legislators; or (b) that the legislators in return for the gratuities took any official action concerning any proposed legislation which would have affected Mass. Medical. In other words, the Commission is not aware of a *quid pro quo*. Even if the conduct of Mass. Medical was only intended to create goodwill, it was still impermissible.

16. Mass. Medical, through its current officers, has cooperated with the Commission in its investigation.^{5/}

In view of the foregoing violations of G.L. c. 268A, §3(a), the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Mass. Medical:

- (1) that Mass. Medical pay to the Commission the sum of forty-five thousand dollars (\$45,000) as a civil fine for violating G.L. c. 268A, §3(a); and
- (2) that Mass. Medical waives all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this agreement in any related administrative or judicial proceeding to which the Commission is or may be a party.

DATE: December 14, 1995

^{1/} Many of these bills have a potential economic impact on Mass. Medical's members.

^{2/} As discussed, Hunt's records do not identify who he entertained. The Commission, however, has based the \$15,000 figure on the following: (1) certain legislators have identified themselves as having been entertained by Hunt; (2) a significant portion of the expenses were incurred at conferences attended by Massachusetts legislators; (3) the amount of expenses was far in excess of any amount Hunt could have incurred for his own expense and expenses in connection with that portion of his job that did not involve him in dealing with legislators or their staff; and (4) Hunt's refusal to testify precluded the Commission from obtaining direct evidence of the amount of the gratuities and accordingly, because of the unavailability of such direct evidence, the Commission has drawn an adverse inference that on numerous occasions during this time period he did provide (as a Mass. Medical lobbyist) \$50 or more in entertainment value to Massachusetts legislators.

As noted, neither the Commission nor Mass. Medical had sufficient information to determine the actual amount of gratuities Hunt provided to Massachusetts legislators between July 1989 and April 1993. However, in order to bring closure to this matter by the Disposition Agreement, Mass. Medical has stipulated to the figure set by the Commission.

^{3/} See *Commonwealth v. Famigletti*, 4 Mass. App. 584 (1976); *EC-COI-93-14*.

^{4/} For §3 purposes, it is unnecessary to prove that the gratuities given were generated by some specific identifiable act performed or to be performed. As the Commission explained in *Advisory No. 8*, issued May 14, 1985, prohibiting private parties from giving free tickets worth \$50 or more to public employees who regulate them,

[E]ven in the absence of any specifically identifiable matter that was, is or soon will be pending before the official, section 3 may apply. Thus, where there is no prior social or business relationship between the giver and the recipient, and the recipient is a public official who is in a position to use his authority in a manner which could affect the giver, an inference can be drawn that the giver was seeking the goodwill of the official because of a perception by the giver that the public official's influence could benefit the giver. In such a case, the gratuity is given for as yet unidentified "acts to be performed."

Specifically, §3 applies to generalized goodwill-engendering entertainment of legislators by private parties, even where no specific legislation is discussed. See *In re John Hancock Mutual Life Insurance Company*, 1994 SEC 646 (Hancock violated §3(a) by providing meals, golf and event tickets to legislators); *In re Flaherty*, 1991 SEC 498; issued December 10, 1990 (majority leader violates §3 by accepting six Celtics tickets from billboard company's lobbyists); *In re Massachusetts Candy and Tobacco Distributors, Inc.*, 1992 SEC 609 (company representing distributors violates §3 by providing a free day's outing [a barbecue lunch, golf or tennis, a cocktail hour and a clam bake dinner], worth over a \$100 per person, to over 50 legislators, their staffers and family members, with the intent of enhancing the distributors' image with the legislature and where the legislators were in a position to benefit the distributors).

Section 3 applies to meals and golf, including those occasions motivated by business reasons, for example, the so-called "business lunch." See *In re U.S. Trust*, 1988 SEC 356. Finally, §3 applies to entertainment gratuities of \$50 or more even in connection with educational conferences. See *In re Stone and Webster*, 1991 SEC 522, and *In re State Street Bank*, 1992 SEC 582.

In arriving at the \$50 or more expense figure, the Commission would include all expenses on a single day or at a single conference attributable to a specific legislator. For example, a lunch and dinner on a given day for a legislator might cost less than \$50, but if totalled they equaled or exceeded \$50, they would be included. In addition, where the lobbyist paid for a legislator's spouse's expenses, those expenses would be attributed to the legislator.

On the present facts, §3 applies to entertainment of legislators and their staff by Mass. Medical's lobbyist where the intent was generally to create goodwill and the opportunity for access, even if specific legislation was not discussed.

^{5/} The Commission also notes that within days of the Disposition Agreement entered into by John Hancock (1994 SEC 646, dated March 21, 1994), Mass. Medical implemented a written policy to bring all expenditures in line with the standards outlined in that Disposition Agreement. This was before the Commission notified Mass. Medical that it was the subject of a Preliminary Inquiry. The policy memorandum, dated March 29, 1994, provides that no legislative agent, government relations staffer or consultant should expend \$100 or more cumulatively over the course of any year on gifts, entertainment of any kind, including meals and drinks, on any one legislator and his or her family members, and further that on any given occasion, gifts and entertainment of any kind, including meals and drinks, totaling \$50 to any one legislator and his or her family are prohibited.